

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: August 22, 2007

TO: Lance Wade, Director of Purchasing and Contracting

FROM: Downs Prior, Principal Contract Specialist

SUBJECT: Sole Source Request – Consultant Selection for Professional Services for Final Environmental Document for the El Camino Real Bridge Replacement and Road Widening – CIP 52-479.0

Negotiated Total: \$396,000.00 (Total for 2 phases)
Dept. Est. Total: \$396,000.00 (Total for 2 phases)
Vendor: RECON Environmental, Inc.
Expiration Date: 03/01/09
Recommendation: Approval for Phase I - \$200,000.00

I have reviewed the subject sole source request, and hereby recommend approval.

The City has two (2) current projects in the same location as the subject sole source. RECON is the environmental sub-consultant on both of the co-located projects. As such, they possess all of the pertinent data required to expeditiously support the EIR required for the El Camino Real Bridge Replacements and Road Widening Project. RECON's support of the overall project will be required through March 1, 2009. This sole source is to be implemented in 2 phases as follows:

Phase I: \$200,000.00

- Prepare Final EIR - \$190,000.00
- Optional Response to New Comments of DEIR Recommended - \$10,000.00

Phase II: \$196,000.00 (project for FY'09 budget)

- Prepare Environmental Assessment - \$141,000.00
- Environmental Permitting Support - \$55,000.00

This sole source request is for approval of Phase I only. The approval of the Phase II release will be submitted under separate cover at a later date when finding is made available.

Approval of this sole source supports the City's "Best Value" practice as it allows the most expeditious compliance with the project schedule, and due to RECON's existing data base for the project area, will provide the most comprehensive final Draft EIR, thus greatly reducing the possibility of additional re-writes. Said reduction will translate into substantial cost savings to the City.

Page 2
Lance Wade, Director
August 22, 2007

RECON is an experienced, well qualified firm who has a proven performance record with the City.

I recommend the approval of Phase I, and the overall sole source, inclusive of Phase II when released.

Additional action is required of this Department when Phase II is required. Said action will be approval of a sole source memo for Phase II.

Please reference Sole Source #1667 on all requisitions submitted for Phase I, El Camino Real Bridge Replacement and Road Widening – REOCN Environmental, Inc.

Downs Prior
Principal Contract Specialist

WDP/cg

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: August 22, 2007

TO: Patti Boekamp, Director

FROM: Lance Wade, Director

SUBJECT: Sole Source Request for Consultant Selection for Professional Services
for final Environmental Document for the El Camino Real Bridge
Replacement and Road Widening CIP 52-479.0.

Your Sole Source Request for the above subject with Recon Environmental, Inc. (Recon) was approved and is valid through 03/01/2009. In order for a Purchase Order to be issued, your department has to submit a purchase requisition. In the internal header notes of the requisition, please reference Sole Source Case Number 1667. For questions, please contact Downs Prior at x55298.



Lance Wade
Director

LW/mw

cc: Dave Zoumaras, Deputy Director, Engineering & Capital Projects/TE
Abi Palaseyed, Project Manager, Engineering & Capital Projects/TE

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: July 24, 2007

TO: Lance Wade, Purchasing & Contracting Department Director

FROM: Patti Boekamp, Engineering and Capital Projects Department Director


SUBJECT: Consultant Selection for Professional Services for final Environmental Document for the El Camino Real Bridge Replacement and Road Widening CIP 52-479.0.

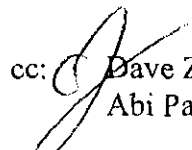
Your decision is requested for the sole-source selection of a consultant for the final Environmental Impact Report (EIR) for the El Camino Real Bridge Replacement and Road Widening Project (Bridge #57C-0042, CIP 52-479.0).

It is requested that Council Policy 300-7 and Administrative Regulation 25.60 be waived for the selection of a consultant to prepare an EIR and that Recon Environmental, Inc. (Recon) be retained as a sole source consultant. The justification for sole sourcing the consultant is as follows: Recon is a subcontractor for Rick Engineering, which is the prime contractor for many City projects including the Via De La Valle Project and the El Camino Real Widening Project. Both projects are in the same location as the El Camino Real Bridge Replacement and Road Widening Project. Recon's familiarity with the region's traffic and environmental issues will enhance their ability to complete the EIR expeditiously and completely, reducing the likelihood of re-writes after public comment is received. Recon's experience and knowledge of all three projects will also minimize the necessity to modify or oversee their work- reducing the project's impact on staff time. These factors translate into time and cost savings that justify sole-sourcing since no consultant has the same advantageous externalities.


Patti Boekamp

Concur


Richard Haas

cc:  Dave Zoumaras, Deputy Director, Engineering & Capital Projects/TE
Abi Palaseyed, Project Manager, Engineering & Capital Projects/TE

001621

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

01/08

October 11, 2007

105

SUBJECT: El Camino Real Bridge/Road Widening-Consultant Contract With Recon Environmental, Inc.

GENERAL CONTRACT INFORMATION

Recommended Consultant: Recon Environmental, Inc.
Amount of this Action: 200,000
Funding Source: City

SUBCONTRACTOR PARTICIPATION

There is no subcontractor activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

This action authorizes a sole source agreement with Recon Environmental, Inc for the completion of an Environmental Impact Report (EIR) for the El Camino Real Bridge/Road Widening. Recon Environmental, Inc. submitted a Workforce Report for their San Diego office dated October 9, 2007. The Workforce Report reflects under representation in the following areas:

African American – Management and Financial, Technical
Hispanic – Management and Financial
Asian – Management and Financial, Technical, Administrative Support
Filipino – Professional, Technical, Administrative Support
Female – Technical, Laborers

Recon Environmental, Inc. has been requested to submit an Equal Opportunity Plan to address remedies for these deficiencies.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

by:AMJ

File: Admin WOFO 2000

Date WOFO Submitted: 10/9/2007
Input by: SHGoals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CACity of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORTFOR
Company: RECON Environmental

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White		Other			
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	1	6	5	0	0		
Professional	4.0%	0	0	12.6%	0	3	6.5%	0	0	0.5%	0	0	6.5%	0	0	9	13	0	0		
A&E, Science, Computer	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0	0	0		
Technical	6.6%	0	0	14.8%	15	5	17.2%	0	0	0.4%	0	0	17.2%	1	0	4	4	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	2	20.8%	0	4	8.6%	0	0	0.6%	0	0	8.8%	0	0	0	6	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	1	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	17	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	1	0	0	0		
TOTAL		0	2		33	12		0	0		0	0		1	1		20	28		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
12	6	6	39.8%
25	9	16	59.5%
0	0	0	22.3%
29	20	9	49.0%
0	0	0	49.4%
12	0	12	73.2%
0	0	0	62.3%
0	0	0	8.6%
0	0	0	36.7%
1	1	0	15.2%
16	18	0	11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

TOTAL

97 54 43

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.40	0	N/A	1.43	0	(1.43)	0.74	0	N/A	0.05	0	N/A	0.74	1	N/A	4.78	6	1.22
Professional	1.00	0	(1.00)	3.15	3	N/A	1.63	0	(1.63)	0.13	0	N/A	1.63	0	(1.63)	14.88	16	1.13
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	1.91	0	(1.91)	4.29	20	15.71	4.99	0	(4.99)	0.12	0	N/A	4.99	1	(3.99)	14.21	9	(5.21)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.84	2	1.16	2.50	4	1.50	1.06	0	(1.06)	0.07	0	N/A	1.06	0	(1.06)	8.78	12	3.22
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.08	0	N/A	0.32	1	N/A	0.05	0	N/A	0.01	0	N/A	0.05	0	N/A	0.15	0	N/A
Laborers	0.79	0	N/A	9.72	17	7.28	0.74	0	N/A	0.09	0	N/A	0.74	0	N/A	2.00	0	(2.00)

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT**ADMINISTRATIVE**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☒ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: RECON Environmental

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 1924 Fifth AvenueCity San Diego County San Diego State CA Zip 92101Telephone Number: (619) 308-9333 FAX Number: (619) 308-9334Name of Company CEO: Charly Bull

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: _____ FAX Number: () _____

Type of Business: Environmental Type of License: _____The Company has appointed: Cindy Sengo

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 1927 Fifth Avenue, San Diego, CA 92101Telephone Number: (619) 308-9333 FAX Number: (619) 308-9334

- ☒ One San Diego County (or Most Local County) Work Force - Mandatory
☐ Branch Work Force *
☐ Managing Office Work Force

Check the box above that applies to this WFR.

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of RECON Environmental

(Firm Name)

San Diego, CA hereby certify that information provided

(County)

(State)

herein is true and correct. This document was executed on this 9 day of October, 2007.

(Authorized Signature)

Cindy Sengo

(Print Authorized Signature)

WORK FORCE REPORT - NAME OF FIRM: RECON Environmental

DATE: 1/19/2007

OFFICE(S) or BRANCH(ES): San Diego, CA

COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial									1		6	5		
Professional				3							9	13		
A&E, Science, Computer														
Technical			15	5					1		4	4		
Sales														
Administrative Support		2		4								6		
Services														
Crafts														
Operative Workers														
Transportation				1										
Laborers*				17							1			

*Construction laborers and other field employees are not to be included on this page

Totals Each Column		2	33	12					1	1	20	28		
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Grand Total All Employees	97
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														



CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of each of the three counties.^{1,2} On the other hand, if the

project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.²

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one¹, two² & three³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county*

Exhibit: Work Force Report Job categories

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers

Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers

Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

ENCLOSURE -SUB CONSULTANTS SCOPES OF WORK

	<u>Subcontract Amount</u>	<u>Percent of Contract</u>
Hon Consulting, Inc – Completion of the Final EIR	\$60,000	30%
<i>Optional: Responses to comments on recirculated Draft EIR</i>	\$10,000	5%
Tierra Environmental Services – Biological Assessment	\$15,930	7.965%
KTU+A – Preparation of Additional Visual Simulation	<u>\$17,200</u>	<u>8.6%</u>
	\$103,130	51.565%

001631

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

2800408

01/08
105TO:
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):
Engineering & Capital Projects3. DATE:
September 27, 2007

4. SUBJECT:

El Camino Real Bridge / Road Widening - Consultant Contract with Recon Environmental, Inc.

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

Abi Palaseyed 533-3756 MS 612 AP

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

Marnell Gibson 533-5213, MS 612

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	30300				9. ADDITIONAL INFORMATION / ESTIMATED COST: This contract \$200,000
DEPT.	30244				
ORGANIZATION	107				
OBJECT ACCOUNT	4279				
JOB ORDER	524790				
C.I.P. NUMBER	52-479.0				
AMOUNT	\$200,000				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/2/07	8	DEPUTY CHIEF	<i>[Signature]</i>	11/26/07
2	EAS	<i>Agnes Shagwood</i>	10/5/07	9	COO	- Not required -	
3	EOCP	<i>Celia Hoffman</i>	10/11/07	10	CITY ATTORNEY	<i>Pete A. [Signature]</i>	12/7/07
4	LIAISON OFFICE	<i>[Signature]</i>	10/17/07	11	ORIGINATING DEPARTMENT	<i>Abi Palaseyed</i>	12/18/07
5	CIP/FM	<i>Angela [Signature]</i>	11/6/07	DOCKET COORD: <i>[Signature]</i> 12/18 COUNCIL LIAISON: <i>[Signature]</i>			
6	AUDITOR	<i>CM [Signature]</i>	11/21/07 ✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/>			
7				REFER TO: <i>1/8</i> COUNCIL DATE: 1/8/08			

11. PREPARATION OF:

☒ RESOLUTION(S)☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Mayor to execute a sole source agreement with Recon Environmental, Inc. for the purpose of completing the Environmental Impact Report (EIR) for CIP 52-479.0, El Camino Real Bridge/Road Widening, in the amount of \$200,000; and

11A. STAFF RECOMMENDATIONS:

Adopt the resolutions

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

1

COMMUNITY AREA(S):

Carmel Valley, NCFUA Subarea II

ENVIRONMENTAL IMPACT:

This activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(C) (3).

HOUSING IMPACT:

None

OTHER ISSUES:

Attachments – Sole Source Memo dated August 22, 2007 and Consultant Contract

001632

2. Authorizing the expenditure of \$200,000 from CIP 52-479.0, El Camino Real Bridge/Road Widening, Fund 30300, Transnet, for the sole source agreement with Recon Environmental, Inc.; and
3. Authorizing the Auditor and Comptroller, upon advice from the administering department, to return excess funds, if any, to the appropriate reserves.

RECEIVED

07 DEC 19 AM 9:31

CITY CLERKS OFFICE
SAN DIEGO, CA

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE	REPORT NO:
ISSUED:	
ATTENTION:	Council President and City Council
ORIGINATING DEPARTMENT:	Engineering and Capital Projects
SUBJECT:	El Camino Real Bridge/Road Widening – Consultant Contract with Recon Environmental, Inc.
COUNCIL DISTRICT(S):	1
CONTACT/PHONE NUMBER:	Abi Palaseyed, (619)-533-3756

REQUESTED ACTION: Execute a sole source agreement with Recon Environmental, Inc. for the purpose of completing the Environmental Impact Report (EIR).

STAFF RECOMMENDATION: Adopt the resolutions

EXECUTIVE SUMMARY: The El Camino Real Bridge/Road Widening Project consists of replacing the structurally deficient bridge over the San Dieguito River and provides roadway improvements on El Camino Real (Via de la Valle to San Dieguito Road) and Via de la Valle (between the northern and southern segments of El Camino Real). The project also includes curbs, gutters, sidewalks, bike lanes, landscaping, traffic signal and other related improvements. The justification for sole sourcing the contract to Recon is as follows: Recon is a subconsultant for Rick Engineering, which is the prime consultant for the Via De La Valle Project and the El Camino Real Widening Project between Half Mile Dr. and San Dieguito Rd. . Both projects are in the same location as the El Camino Real Bridge Replacement and Road Widening Project. Recon's familiarity with the region's traffic and environmental issues will enhance their ability to complete the EIR expeditiously and completely and reduce the likelihood of re-writes after public comment is received. Recon's experience and knowledge of all three projects will also minimize the necessity to modify or oversee their work, reducing the project's impact on staff time. These factors translate into time and cost savings that justify sole-sourcing this contract to Recon.

FISCAL CONSIDERATIONS: Funding in the amount of \$200,000 is available in CIP 52-479.0, El Camino Real Bridge/Road Widening, Fund 30300, Transnet.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Council Resolution R-289908 dated March 31, 1998 authorized the expenditure of \$411,817 for the execution of the original consultant contract with Earth Tech.
Council Resolution R-295346 dated August 6, 2001 authorized the expenditure of \$450,684 for the execution of the First Contract Amendment with Earth Tech.
Council Ordinance O-19234 dated November 8, 2004 authorized the expenditure of \$275,394 for the execution of the Second Contract Amendment with Earth Tech.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Carmel Valley
Community Planning Board, San Dieguito River Joint Powers Association, 22nd District
Agricultural Association

KEY STAKEHOLDERS AND PROJECTED IMPACTS: San Diego Polo Club, Plaza Partners,
Ladeki Restaurant Group, Mary's Tack and Feed, All Creatures Animal Hospital, Recon, Rick Engineering



David Jarrell, Director
Engineering and Capital Projects



Richard Haas, Deputy Chief
Public Works

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

AC 2800408

DEPT. NO.: 547

Amount: _____ Fund: _____

Purpose: _____

Date: November 23, 2007 By: Caryn McGriff

FUND OVERRIDE ☐

Not to Exceed: \$200,000.00

Vendor: Recon Environmental, Inc.

Purpose: To authorize the expenditure of funds for the purpose of executing a sole source agreement for the completion of an EIR related to El Camino Real Bridge & Road Widening.

Date: November 23, 2007 By: [Signature]

TOTAL	\$200,000.00
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FUND OVERRIDE		
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AC 2800408

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING TO EXECUTE AN AGREEMENT
WITH RECON ENVIRONMENTAL, INC. FOR THE EL
CAMINO REAL BRIDGE/ROAD WIDENING IN THE
CARMEL VALLEY PLANNING AREA.

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and he is
hereby authorized and empowered to execute, for and on behalf of said City, an agreement with
Recon Environmental, Inc. [Agreement], for the purpose of completing the Environmental
Impact Report under the terms and conditions set forth in the Agreement on file in the office of
the City Clerk as Document No. RR _____.

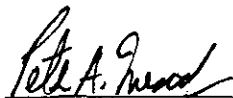
BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed
\$200,000 from Fund No. 30300, TransNet, CIP No. 52-479.0, El Camino Real Bridge/Road
Widening, is authorized for the purpose of providing funds for the above referenced Agreement.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from
the administering department, is authorized to transfer excess funds, if any, to the appropriate
reserves.

BE IT FURTHER RESOLVED, that this activity is not a "project" and is therefore
exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Peter A. Mesich
Deputy City Attorney

PAM:cfq
11/27/07
Or.Dept:E&CP
Aud.Cert.:2800408
R-2008-481

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**AGREEMENT FOR CONSULTING SERVICES
FOR
THE CITY OF SAN DIEGO
ENGINEERING AND CAPITAL PROJECTS**

LUMP SUM AGREEMENT
FOR
CONSULTANT SERVICES

THE CITY OF SAN DIEGO
AND
Recon Environmental, Inc.

Contract Number: H084154

Table of Contents

ARTICLE I CONSULTANT SERVICES

1.1	Scope of Services	1
1.2	Contract Administrator.....	1
1.3	City Modification of Scope of Services.....	1
1.4	Written Authorization	2
1.5	Confidentiality of Services.	2
1.6	Competitive Bidding.....	2

ARTICLE II DURATION OF AGREEMENT

2.1	Term of Agreement.....	2
2.2	Time of Essence.....	3
2.3	Notification of Delay.....	3
2.4	Delay.....	3
2.5	City's Right to Suspend for Convenience	3
2.6	City's Right to Terminate for Convenience.....	3
2.7	City's Right to Terminate for Default.....	4

ARTICLE III COMPENSATION

3.1	Amount of Compensation.	4
3.2	Additional Services.	4
3.3	Manner of Payment.	4
3.4	Additional Costs.....	5
3.5	Eighty Percent Notification.....	5

ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1	Industry Standards.....	5
4.2	Right to Audit.....	5
	4.2.2 Audit.....	6
	4.2.3 City's Right Binding on Subcontractors.....	6

	4.2.4 Compliance Required before Mediation or Litigation.....	6
4.3	Insurance.....	6
	4.3.1 Types of Insurance.....	7
	4.3.2 Deductibles.....	7
	4.3.3 Acceptability of Insurers.....	7
	4.3.4 Required Endorsements.....	8
	4.3.5 Reservation of Rights.....	9
	4.3.6 Additional Insurance.....	10
	4.3.7 Excess Insurance.....	10
4.4	Subcontractors.....	10
	4.4.1 Subcontractor Contract.....	10
4.5	Contract Activity Report.....	11
4.6	Non-Discrimination Requirements.....	11
	4.6.1 Compliance with the City's Equal Opportunity Contracting Program. .	11
	4.6.2 Non-Discrimination Ordinance.....	11
	4.6.3 Compliance Investigations.....	11
4.7	Drug-Free Workplace.....	12
	4.7.1 Consultant's Notice to Employees.....	12
	4.7.2 Drug-Free Awareness Program.....	12
	4.7.3 Posting the Statement.....	12
	4.7.4 Subcontractor's Agreements.....	12
4.8	Product Endorsement.....	12
4.9	Conflict of Interest.....	12
	4.9.1.....	13
	4.9.2.....	13
	4.9.3.....	13
	4.9.4.....	13
4.10	Mandatory Assistance.....	13
4.11	Compensation for Mandatory Assistance.....	14
4.12	Attorney Fees related to Mandatory Assistance.....	14
4.13	Notification of Increased Construction Cost.....	14

ARTICLE V RESERVED

ARTICLE VI INDEMNIFICATION

6.1	Indemnification and Hold Harmless Agreement.....	14
-----	--	----

ARTICLE VII MEDIATION

7.1	Mandatory Non-binding Mediation.....	15
7.2	Mandatory Mediation Costs.....	15
7.3	Selection of Mediator.....	15
	7.3.1.....	15

	7.3.2.....	15
	7.3.3.....	15
7.4	Conduct of Mediation Sessions.....	15
	7.4.1.....	16
	7.4.2.....	16

ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS

8.1	Work For Hire.....	16
8.2.	Rights in Data.....	16
8.3	Intellectual Property Rights Assignment.....	16
8.4	Moral Rights.....	16
8.5	Subcontracting.....	17
8.6	Publication.....	17
8.7	Intellectual Property Warranty and Indemnification.....	17
8.8	Enforcement Costs.....	18

ARTICLE IX MISCELLANEOUS

9.1	Notices.....	18
9.2	Headings.....	18
9.3	Non-Assignment.....	18
9.4	Independent Contractors.....	18
9.5	<i>Consultant and Subcontractor Principals for Consultant Services.....</i>	18
9.6	Covenants and Conditions.....	19
9.7	Compliance with Controlling Law.....	19
9.8	Jurisdiction and Attorney Fees.....	19
9.9	Successors in Interest.....	19
9.10	Integration.....	19
9.11	Counterparts.....	19
9.12	No Waiver.....	19
9.13	Severability.....	20
9.14	Additional Consultants or Contractors.....	20
9.15	Employment of City Staff.....	20
9.16	Municipal Powers.....	20
9.17	Drafting Ambiguities.....	20
9.18	Signing Authority.....	20
9.19	Conflicts Between Terms.....	20
9.20	Consultant Evaluation.....	20
9.21	Exhibits Incorporated.....	20
9.22	Survival of Obligations.....	21

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CONSULTANT LUMP SUM AGREEMENT EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form

**LUMP SUM AGREEMENT BETWEEN
THE CITY OF SAN DIEGO
AND RECON ENVIRONMENTAL, INC.
FOR CONSULTANT SERVICES**

THIS Agreement is made and entered into between the *City of San Diego*, a municipal corporation [City], and *Recon Environmental, Inc.* [Consultant] for the Consultant to provide Services to the City for Environmental Services.

RECITALS

The City wants to retain the services of an *Environmental Consulting* firm to provide *environmental* services [the Services].

The Consultant has the expertise, experience and personnel necessary to provide the Services. The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Services .

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

CONSULTANT SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services. The Consultant shall perform the Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City

1.2 Contract Administrator. The *Engineering and Capital Projects Department* is the contract administrator for this Agreement. The Consultant shall provide the Services under the direction of a designated representative of the *Engineering and Capital Projects Department*. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Professional Services to be performed. All such changes shall be in writing and shall

be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall immediately notify the City. If the City deems it appropriate, an equitable adjustment to the Consultant's compensation or time for performance may be made, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Services, the Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services (Exhibit A), Compensation and Fee Schedule [Exhibit B], or Time Schedule [Exhibit C], and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services. All Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding. If applicable, the Consultant shall comply with the following: Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans, specifications, studies, or reports. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in

accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **April 1, 2009**, whichever is the earliest but not to exceed five years unless approved by City ordinance. .

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

2.3 Notification of Delay. The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the City's requirements for the Services, the City may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay. If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant's inability to obtain materials, equipment, or labor.

2.5 City's Right to Suspend for Convenience. The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Services the Consultant has satisfactorily performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience. The City may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Services shall be effective upon receipt of the notice by the Consultant. After termination of

this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Services under this Agreement. For services satisfactorily rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all documents or records related to the Consultant's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default. If the Consultant fails to satisfactorily perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The City shall pay the Consultant for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, in a lump sum amount not to exceed **\$200,000.00**. The compensation for the Scope of Services shall not exceed **\$190,000.00**, and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed **\$10,000.00**.

3.2 Additional Services. The City may require that the Consultant perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Consultant's performance of Additional Services, the City and the Consultant must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule (Exhibit B). The City will pay the Consultant for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The City shall pay the Consultant in accordance with the Compensation and Fee Schedule (Exhibit B). For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice

date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Additional Costs. Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, the Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

3.5 Eighty Percent Notification. The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services (Exhibit A) appears that it may be greater than the maximum compensation for this Agreement.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards. The Consultant agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent *environmental consulting* firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises to review and audit the Consultant's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant or Subcontractor is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant and all subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant and Subcontractors shall make available to the City for review and audit, all Service related accounting records and documents, and any other financial data. Upon the City's request, the Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right Binding on Subcontractors. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance. The Consultant shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates reflecting evidence of all insurance as set forth herein; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required in Section 4.3.3 of this Agreement; and (c) confirmed that all policies contain the specific provisions required in Section 4.3.4 of this Agreement. Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

4.3.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1 million** per occurrence and subject to an annual aggregate of **\$2 million**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

4.3.1.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

4.3.1.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.1.4 Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of **\$1 million** per claim and **\$2 million** annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

4.3.3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Consultant's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers,

employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Consultant.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.4.4 Professional Liability Insurance

CANCELLATION. Except as provide for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 9.1 "Notices."

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Consultant's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Consultant for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Consultant may obtain additional insurance not required by this Agreement.

4.3.7 Excess Insurance. All policies providing excess coverage to the City shall follow the form of the primary policy or policies including but not limited to all endorsements.

4.4 Subcontractors. The Consultant's hiring or retaining of any third parties [Subcontractors] to perform Services [Subcontractor Services] is subject to prior approval by the City. The Consultant shall list on the Subcontractor List [Exhibit D Attachment BB] all Subcontractors known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subcontractor Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subcontractor Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subcontractor Contract. All contracts entered into between the Consultant and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Consultant shall require the Subcontractor to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

4.4.1.2 The Consultant is obligated to pay the Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Consultant shall notify the City in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Consultant shall pay the Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subcontractor, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subcontractor should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subcontractor is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit D of this Agreement.

4.4.1.6 The City is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the City.

4.5 Contract Activity Report. The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit D Attachment CC]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subcontractor listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The

Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace. The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E].

4.7.1 Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Consultant further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subcontractors shall be individually responsible for their own drug-free work place program.

4.8 Product Endorsement. The Consultant acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.9 Conflict of Interest. The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.9.1 If, in performing the Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.9.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

4.9.1.2 If the City requires the Consultant to file a statement of economic interests as a result of the Services performed, the Consultant shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.9.2 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.9.3 The Consultant's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.9.4 If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.10 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.11 Compensation for Mandatory Assistance. The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under

Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.12 Attorney Fees related to Mandatory Assistance. In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.13 Notification of Increased Construction Cost. If applicable, at any time prior to the City's approval of the final plans, specifications, studies, or report, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

ARTICLE V

RESERVED

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.3 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.4 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the City pursuant to this Agreement (Deliverable Materials) is "work for hire" under the United States Copyright law and shall become the sole property of the City. The Contractor, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the City to the deliverable Materials.

8.2. Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Contractor, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the City. The Consultant, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.3 Intellectual Property Rights Assignment Consultant, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

8.4 Moral Rights Consultant, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Consultant, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Consultant, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

8.5 Subcontracting In the event that Consultant utilizes a Subcontractor(s) for any portion of the Work that is in whole or in part of the specified Deliverable(s) to the City, the agreement between Consultant and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable/Work product as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable/Work product, whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the City. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the City, all titles, rights and interests in and to said Work/Deliverable, including all copyrights and other intellectual property rights. City shall have the right to review any Subcontractor agreement for compliance with this provision.

8.6 Publication. Consultant may not publish or reproduce any Deliverable Materials, for purposes unrelated to Consultant's work on behalf of the City without prior written consent of the City.

8.7 Intellectual Property Warranty and Indemnification. Consultant represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Consultant to produce, at Consultant's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Consultant further agrees to indemnify and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Consultant receives payment under this contract, City shall be entitled, upon written notice to Consultant, to withhold some or all of such payment.

8.8 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Article 8, including but not limited to, attorney's fees.

8.9 Ownership of Documents. Once the Consultant has received any compensation for the Professional Services performed under this Agreement, all documents, including but not limited to, original plans, maps, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City.

ARTICLE IX

MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: *1010 Second Avenue, Suite 1200, San Diego, CA 92101* and notice to the Consultant shall be addressed to: *1927 Fifth Avenue, San Diego, CA 92101*

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this

paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

9.4 Independent Contractors. The Consultant and any Subcontractors employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

9.5 Consultant and Subcontractor Principals for Consultant Services. It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the following members of the Consultant's organization: *David Gottfredson* [Project Team]. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultant's organization or to Subcontractors without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. Removal of any member of the Project Team with out notice and approval by the City vide may be considered a default of the terms and conditions of this Agreement by the Consultant. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. If the City does not approve of a proposed replacement, the City may terminate this Agreement pursuant to section 2.6 of this Agreement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultant's employees or agents to be removed from the Project.

9.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

9.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement

have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.11 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.12 No Waiver. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.13 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional Consultants or contractors as the City deems necessary to perform work or to provide the Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Consultant.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.18 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

9.19 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.20 Consultant Evaluation. City will evaluate Consultant's performance of Services using the Consultant Evaluation Form [Exhibit F].

9.21 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.22 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

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CONSULTANT LUMP SUM AGREEMENT EXHIBITS

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's Equal Opportunity Contracting Program Consultant Requirements
 - (AA) Work Force Report
 - (BB) Subcontractors List
 - (CC) Contract Activity Report
- Exhibit E - Consultant Certification for a Drug-Free Workplace
- Exhibit F - Consultant Evaluation Form

001668

EXHIBIT A

SCOPE OF SERVICES

Scope of Work

Environmental Impact Report

- 1A. RECON will subcontract with Hon Consulting, Inc. in accordance with the attached Hon Consulting, Inc. scope of work to:
 - i. incorporate into the EIR the Modified Eastern Alignment Alternative;
 - ii. incorporate into the EIR the Task Force Alternative;
 - iii. complete the Final EIR;
- 2A. RECON will subcontract with Tierra Environmental Services (Tierra) for additional biological services related to the Modified Eastern Alignment Alternative, Task Force Alternative, and new biological mitigation design in accordance with the attached Tierra scope of work.
- 3A. RECON will subcontract with KTU+A to prepare additional and revised visual simulations relating to the Modified Eastern Alignment and Task Force Alternatives to be incorporated into the EIR in accordance with the attached KTU+A scope of work.
- 4A. Field truth GIS biological wetland data previously generated for the project. Assess biological impacts related to the Modified Eastern Alignment and the Task Force Alternatives.
- 5A. RECON will participate in the development of a new biological mitigation plan intended to replace or supplement the mitigation plan described in the public review DEIR. This task includes meetings and informal consultation with the wildlife agencies.
- 6A. Provide project oversight and review of all RECON sub consultants.
- 7A. Coordinate and provide general team and agency meeting support during preparation of the EIR.
- 8A. Provide production and graphics support for the EIR for the tasks outlined in Items 1A through 3A above.
- 9A. Provide a camera ready copy of the Final EIR to the City for printing and distribution.

Additional Tasks if City Chooses to Recirculate a revised Draft EIR

- 10A. Produce and provide a camera ready copy of the revised Draft EIR for public circulation.
- 11A. RECON will subcontract with Hon Consulting, Inc. in accordance with the attached Hon Consulting, Inc. scope of work to provide written responses to comments received during recirculation of the revised Draft EIR.

Assumptions

1. The City Development Services Department (DSD) will be the lead agency for the EIR.
2. The scope of work assumes that the project addressed in the EIR will be that as described in the public review Draft EIR with the addition of the Modified Eastern Alignment Alternative and the Task Force Alternative.
3. If it is determined that an alternative(s) is required in addition to those described in Assumption 2 above, work associated with that alternative(s) would be performed under additional authorization.
4. The scope of work includes the additional task of responding to new comments should the City decide to recirculate a revised Draft EIR for public review.
5. The City will prepare and publish all public notices.
6. Under a separate non-City contract (e.g., a contract with Black Mountain Ranch LLC), Rick Engineering will be incorporating the changes to the water quality report already requested by Caltrans (confirmed by E. Camerino, Rick Engineering, 4/19/2007).
7. Under a separate non-City contract (e.g., a contract with Black Mountain Ranch LLC), Rick Engineering will be providing all traffic, hydrology, water quality, and other engineering support and services for the development of the revised biological mitigation plan, preparation of the Final EIR and revision of the Draft EIR (if required); confirmed by E. Camerino, Rick Engineering, 4/19/2007).
8. Except for biological resources as outlined in the Tierra Environmental and the RECON scope of work, it is assumed that the Modified Eastern Alignment and the Task Force Alternatives will not require modifications to any technical study.
9. It is assumed that the City will print and distribute the FEIR. The City will print and distribute the recirculated Draft EIR if the City determines that a revised Draft EIR is to be recirculated.
10. The City will pursue the Coastal Zone Permit and interface with the Coastal Commission. As such, the current scope of work does not include RECON support for this task. If the City should desire assistance with this effort, we recommend that a specialist in Coastal Commission processing (for example, Nancy Lucast) be retained to assist with this effort. RECON has not contacted Ms. Lucast or any other coastal specialist in connection with this scope of work. However, based on previous experience, we have drafted the following sample scope, which may be

representative of the effort that would be involved should the City desire assistance with the Coastal Commission process.

1. **CLIENT** retains CONSULTANT as an independent contractor to perform the following tasks with respect to said contract:
 - a. Review the project description and consult/strategize with the City/Applicant to identify major issues during preparation of the EIR, coordinate with Coastal staff, and provide general guidance for the resolution of potential issues.
 - b. Assist with the preparation of the Coastal Development Permit (CDP) package for the project.
 - c. Review the final Coastal Development Permit (CDP) package for accuracy.
 - d. Coordinate and attend meetings with Coastal Commission staff during the processing of the permit.
 - e. Coordinate and prepare briefing information with the Coastal Commission staff during the hearing preparation process.
 - f. Attend Coastal Commission Hearings as needed or as required by the Project Manager.

001673

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

RECON Environmental, Inc.	
Task 1A: Final EIR ¹ (Hon Consulting – sub to RECON)	\$60,000
Task 2A: Biological Support (Tierra Environmental – sub to RECON)	\$15,930
Task 3A: Additional Visual Simulations (KTU+A – sub to RECON)	\$17,200
Task 4A: Biological Support	\$6,960
Task 5A: Develop new mitigation plan	\$39,316
Task 6A: Project Oversight and Coordination	\$25,933
Task 7A: Meetings and Coordination	\$9,072
Task 8A: Production Support	\$10,480
Task 9A: Internal review EIR copying and camera ready final EIR	\$5052
Additional Tasks if DEIR Recirculated ¹	
Task 10A: Camera ready copy draft EIR	\$57
Task 11A: Responses to comments on recirculated DEIR (Hon Consulting – sub to RECON)	\$10,000
Total Contract Amount	
	\$200,000

¹If the City chooses to recirculate the draft EIR, Tasks 1A through 9A will be the completion of the DEIR, and additional Tasks 10A and 11A will be implemented to complete the FEIR.

001675

EXHIBIT C

TIME SCHEDULE

El Camino Real Bridge Widening EIR Estimated Processing Schedule

October 19, 2007

Schedule below assumes that draft EIR will be recirculated and includes an estimate for the amount of time that will be required to work out new biological mitigation with the wildlife agencies. RECON does not have control over agency actions/timeline. Therefore, the actual schedule may vary from that shown.

Task	Time Line
Authorization to Proceed.....	NA
Biology Schedule	
Agency meeting	2 weeks
Develop new mitigation strategy and plan.....	8 weeks*
Agency review	4 weeks
RECON prepare new Screencheck draft EIR.....	8 weeks
City staff review of new Screencheck draft EIR.....	4 weeks
RECON makes final changes to draft EIR	2 weeks
RECON provides camera ready copy of draft EIR for public review.....	1 week
City prints and distributes draft EIR.....	1 week
Public review of draft EIR (45 calendar days)	7 weeks
RECON review public comments on draft EIR and meet with City	1 week
RECON submit draft responses to comments.....	3 weeks
City review of draft responses to comments.....	2 weeks
RECON submit final EIR revisions and finalize responses.....	2 weeks
City review and approve final EIR	2 weeks
RECON provides camera ready copy of final EIR for distribution.....	1 week
Total Time Estimate	48 weeks**

*Timeline for development of new biological mitigation strategy and plan is dependent upon developing concurrence from/with USFWS, CDF&G, and USACE. Actual timeline could be longer.

**Work weeks; does not include holidays

EXHIBIT D

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)
CONTRACTOR REQUIREMENTS**

TABLE OF CONTENTS

I.	City's Equal Opportunity Commitment.....	1
II.	Nondiscrimination in Contracting Ordinance.....	1
III.	Equal Employment Opportunity.....	2
IV.	Equal Opportunity Contracting.....	4
V.	Demonstrated Commitment to Equal Opportunity.....	5
VI.	List of Subconsultants.....	6
VII.	Definitions.....	6
VIII.	Certification.....	7
IX.	List of Attachments.....	7

I.	City's Equal Opportunity Commitment. The City of San Diego (City) is strongly committed to equal opportunity for employees and subconsultants of professional service consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.
II.	Nondiscrimination in Contracting Ordinance. All consultants and professional service providers doing business with the City, and their subconsultants, must comply with requirements of the City's <i>Nondiscrimination in Contracting Ordinance</i> , San Diego Municipal Code Sections 22.3501 through 22.3517.
A.	<u>Proposal Documents to include Disclosure of Discrimination Complaints.</u> As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, subconsultants, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
B.	<u>Contract Language.</u> The following language shall be included in contracts for City projects between the consultant and any subconsultants, vendors, and suppliers:

Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors,

vendors, or suppliers. Consultant shall provide equal opportunity for subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.
- III. **Equal Employment Opportunity.** Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit a *Work Force Report* or an *Equal Employment Opportunity (EEO) Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.
- A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan*.
- B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:
1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;
 2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;

14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

IV. Equal Opportunity Contracting. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer contracting opportunities to all eligible subconsultants. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *subconsultant participation level*.

A. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary Subconsultant Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.
2. While attainment of the 15% Subconsultant Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal,

25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

- B. Contract Activity Reports. To permit monitoring of the successful Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment CC) reflecting work performed by subconsultants shall be submitted quarterly for any work covered under an executed contract.
- V. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.
- A. Proposers are required to submit the following information with their proposals:
 - 1. Outreach Efforts. Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.
 - 2. Past Participation Levels. Listing of Proposer's subconsultant participation levels achieved on all private and public projects within the past three (3) years. Include name of project, type of project, value of project, subconsultant firm's name, percentage of subconsultant firm's participation, and identification of subconsultant firm's ownership as a certified Small Business, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.
 - 3. Equal Opportunity Employment. Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Proposer's *Workforce Report* as compared to the County's Labor Force Availability.
 - 4. Community Activities. Listing of Proposer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.
 - B. Consultant selection panels will consider and evaluate the Proposer's demonstrated commitment to equal opportunity including the following factors:
 - 1. Outreach Efforts. Proposer's outreach efforts undertaken and willingness to make meaningful subconsulting opportunities available to all interested and qualified firms on this project.

2. **Past Participation Levels.** Proposer's subconsultant participation levels achieved on all private and public projects within the past three (3) years.
3. **Equal Opportunity Employment.** Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
4. **Community Activities.** Proposer's current community activities.

VI. List of Subconsultants. Consultants are required to submit a *Subconsultant List* with their proposal.

- A. **Subconsultants List.** The *Subconsultant List* (Attachment BB) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed subconsultant.

1. Subconsultants must be named on the Subconsultants List if they receive more than one-half of one percent (0.5%) of the Prime Consultant's fee.

- B. **Commitment Letters.** Proposer shall also submit subconsultant *Commitment Letters* on subconsultant's letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

VII. Definitions. Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified **"Disabled Veteran Business Enterprise" (DVBE)** means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

"Other Business Enterprise" (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

VIII. Certification.

- A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
 - 1. Current certification by the City of San Diego as MBE, WBE, or DBE;
 - 2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
 - 3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
- B. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060.

IX. List of Attachments.

- AA - *Work Force Report*
- BB - *Subconsultants List*
- CC - *Contract Activity Report*